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The Honorable Lewis J. Liman  
United States District Court for the  
Southern District of New York  
500 Pearl Street, Room 701  
New York, NY 10007

Re: *Steak n Shake Inc. (f/k/a Steak n Shake Operations, Inc.) v. Wilmington Trust, National Association*, Case No. 1:20-cv-06096-LJL

Dear Judge Liman:

As counsel for Wilmington Trust, National Association (“Wilmington”), we write jointly with counsel for Steak n Shake Inc. (“Steak n Shake”): (1) to apprise the Court of the negotiations that have occurred between the parties since yesterday to allow Steak n Shake to consummate the sale of certain real property; and (2) to request a brief extension of existing deadlines on the terms jointly proposed below to allow the parties time to determine whether they can reach an agreement.

Since yesterday, the parties have been in discussions concerning whether Wilmington will agree to release liens on the fifteen Steak n Shake properties at issue in this case contemporaneous with the closing of a sales agreement for the purchase of those properties. If Wilmington agrees to release the liens, Steak n Shake has agreed to direct the full amount of the net proceeds of the sale to be placed in an escrow account subject to terms mutually agreed upon by the parties. Should the parties agree to this resolution, their dispute before the Court would thereafter be limited to the proper disbursement of proceeds from the sale of the real estate under the Credit Agreement. The proceeds of the real estate disposition in escrow will go to the lenders as debt repayment at the end of the case unless: (1) Steak n Shake wins this case; or (2) the parties settle, in which case the settlement agreement will dictate who receives the proceeds held in escrow.

The parties have not reached agreement on this framework because at the moment, Steak n Shake is working to finalize a Third Amendment to its agreement with a prospective purchaser. Steak n Shake is optimistic that it will do so soon. In turn, the resolution between Wilmington and Steak n Shake will depend on whether the amended agreement with the prospective purchaser is on terms that the lenders agree are for fair market value.

In light of these negotiations, and consistent with Section I.C of Your Honor’s Individual Practices in Civil Cases, the parties jointly propose the following extension. On one week from tomorrow, November 13, 2020, the parties will submit a joint status report to the Court indicating whether the real estate transaction with the prospective purchaser has closed and Wilmington has released the liens. If this has happened, the parties will agree to a thirty-day extension of the trial and related deadlines, including for the joint pretrial submission (Dkt. No. 23), subject to the Court’s availability and approval. This extension would provide the parties sufficient time to

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complete fact and expert discovery in an orderly manner, and Steak n Shake would agree to waive any claim that Wilmington's expert report served yesterday morning was untimely. If this has not happened, however, then the parties and the Court will reassess how to proceed, including whether any motion practice concerning justiciability or subject matter jurisdiction would be appropriate.

This is the parties' first request for an extension. In light of the eleventh hour negotiations that have occurred, the parties have made this application as soon as they were able to do so.

We are available at Your Honor's convenience to discuss this proposal and will be prepared to do so at the conference tomorrow morning.

Respectfully Submitted,

/s/ John F. Hagan, Jr.

cc: All Counsel of Record (by ECF)